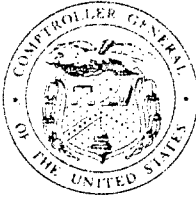


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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-198851

DATE: September 3, 1980

MATTER OF: Paul F. Pugh and Associated  
Professional Engineers

DIGEST:

As protester's Standard Forms 254 and 255 contained misleading information as to size and status of staff, agency's rescission of selection of protester for negotiations of architect-engineer contract was proper.

[Protest  
A&E] Paul F. Pugh and Associated Professional Engineers (Pugh) protests the General Services Administration's (GSA) termination of negotiations with Pugh for an architect-engineer (A&E) contract. Pugh had been selected under the procedures prescribed by the Brooks Bill, 40 U.S.C. §§ 541-544 (1976) as the firm most qualified to perform the required engineering services. When GSA discovered that Pugh's Standard Forms (SF) 254 and 255 upon which the selection had been based did not accurately reflect the size of Pugh's staff, the selection was rescinded and the negotiations were terminated. Pugh contends it had the required staff available and that the Commerce Business Daily (CBD) did not indicate a full-time staff would be required. For reasons discussed below, this protest is denied.

Selection procedures for A&E services prescribe that the requirement be publicly announced. An evaluation board set up by the agency then reviews statements of qualifications and performance data already on file and statements submitted by other A&E firms responding to the public announcement. (SFs 254 and 255). The board must then hold discussions with "no less than three firms regarding anticipated concepts and the relative quality of alternative methods of approach" for providing the services. The board prepares a report for the selection

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official ranking in order of preference no fewer than the three firms considered most qualified. The selection official makes the final choice of the three highest-ranked firms and negotiations are held with the highest-ranked A&E firm. If the contracting officer is unable to reach agreement with that firm on a fair and equitable price, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee.

SF 254 is a statement of qualifications submitted annually by firms wishing to be considered for A&E contracts. Among other things, it requires such firms to indicate the total number of employees by discipline. The instructions for the SF 254 state that the date "upon which all submitted information is current and accurate" should be inserted in the box headed "Date Prepared." Federal Procurement Regulations (FPR) § 1-16.901-254 (1964 ed. amend. 150). Pugh's SF 254, dated February 1, 1979 indicated that it had a staff of 16 employees in its main office and one in each of its four branch offices. SF 255, which is a supplement to the SF 254, provides additional qualifications with respect to a specific project. It requires that all information be "current and factual" and that firms indicate the number of personnel by discipline "presently employed." Pugh's SF 255, dated June 5, 1979, and submitted in response to the CBD announcement of May 18, indicated a total staff of 14 would be available for this project.

After considering the SFs 254 and 255 and interviewing representatives of the top four firms, GSA's evaluation board selected Pugh as the most qualified. GSA's Office of Audits visited Pugh and discovered that only five people had been employed by Pugh from January through April 1979 and that the firm had no payroll thereafter. GSA then informed the firm that its selection was rescinded and that negotiations were terminated because of the inaccurate information upon which the selection was based.

GSA contends the selection official is free to disregard the recommendation of the evaluation board and, in this case, properly did so when the information on which the selection recommendation was based proved to be inaccurate. GSA states

that if the status of Pugh's staff had been correctly reflected in the SFs 254 and 255, Pugh would not have been recommended for selection.

Pugh argues that the SF 254 requires a listing of the average number of employees during the previous year and that the employees listed on the SF 255 for a specific project need not be full-time employees. Pugh further contends that although it did not have a staff employed, it did have a qualified staff available on an as needed basis. Pugh points out that the CBD announcement did not indicate a full-time staff was required and it contends GSA should have indicated the requirement in the CBD as it often does if a full-time staff is required. Pugh states that the small size of the contemplated projects would require no more than two engineers and that any additional part-time employees and professional assistance could be obtained on a contract basis.

The issue here is not whether part-time employees should be considered acceptable but whether an agency must continue a procurement after it discovers the information upon which the selection was based is inaccurate. We do not think so. See Arix Corporation, B-195503, November 6, 1979, 79-2 CPD 331, where we held it was not improper for an evaluation board to change its recommendation when the selected firm subsequently became independent of a nationwide firm with which it had been associated at the time of the initial evaluation.

As the SF 254 instructions clearly require that the data submitted be current and accurate as of the date of the SF 254, we see no support for Pugh's position that the average employment for the previous year should be acceptable. Moreover, we see no basis for Pugh's interpretation that the term "presently employed" as used in the SF 255 can reasonably include those who might be employed either part time or full time. Nor do we agree that the failure of the CBD announcement to specify full-time employees means that offerors could count individuals not presently employed by a firm as members of its staff without indicating that no official employment relationship listed. The evaluated score of Pugh was less than one point (out of a 100) higher than that of the next firm and the evaluation criteria specified in the CBD allocated a weight of 23

percent to the key personnel's time commitments, qualifications and relevant experience as individuals and as a team. Since the selection official is not obligated to follow the recommendation of the solicitation board, FPR § 1-4.1004(a) (1964 ed. amend. 150), his decision to change the ranking of Pugh under the above circumstances does not appear to have been arbitrary. See Boyle Engineering Corporation, B-183355, June 10, 1975, 75-1 CPD 354.

In view of this decision, we see no need for considering Pugh's request for compensation for loss of fee and for damages resulting from GSA's allegations that Pugh's SF 254 and 255 contained misleading information.

*Harry R. Van Cleave*  
For the Comptroller General  
of the United States